

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (New Administrative Regulation)

5 401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment  
6 facilities.

7 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet  
10 to adopt rules and administrative regulations for the management, processing, or disposal of  
11 wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and  
12 disposal of waste obtain a permit. This administrative regulation sets forth permit issuance and  
13 public information procedures for petroleum contaminated soil treatment facilities.

14 Section 1. Definitions. As used in this administrative regulation:

15 (1) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen  
16 material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above  
17 the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous  
18 characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

19 (2) "Petroleum contaminated soil treatment facility" means a solid waste site or facility  
20 where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the  
21 levels established in 401 KAR 48:205, Section 6, Table 2.

Section 2. Applicability. The requirements in this administrative regulation apply to the following applications:

(1) A new petroleum contaminated soil treatment facility permit as established in 401 KAR 47:205; or

(2) A major modification to an existing petroleum contaminated soil treatment facility permit which is an increase in the amount of storage or treatment capacity, area, or volume.

Section 3. Permit Application and Public Notice Process. (1) Upon receipt of DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, or upon receipt of a request for a major modification to a petroleum contaminated soil treatment facility permit in DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit, as incorporated by reference in 401 KAR 47:205, Section 10, the cabinet shall provide a public notice which includes the items established in subsection (1)(a) through (d) of Section 4 of this administrative regulation.

(2) Once the review in 401 KAR 47:205, Section 3(4)(g) is complete, the cabinet shall tentatively decide whether to issue the draft construction permit or to deny the application.

(a) If the cabinet makes a tentative determination to issue a construction permit, a draft permit is prepared which shall include the application by reference and contain the following information:

1. The proposed design and specifications; and

2. Proposed conditions to protect the human health and environment as established in 401 KAR 47:030.

(b) The draft permit shall be based on the administrative record as established in Section 7 of this administrative regulation.

1           (3) Upon completion of the draft permit, the cabinet shall comply with the public  
2 information procedures as established in Sections 4, 5, 6, and 8 of this administrative regulation.

3           (4) The cost of public information procedures established in subsection (3) of this section  
4 which are incurred by the cabinet shall be paid by the applicant.

5           (5) If the cabinet makes a determination to issue the final construction permit, a permit is  
6 issued which shall include the application by reference and contain the following information:

7           (a) The design and specifications; and

8           (b) Conditions to protect the human health and the environment as established in 401 KAR  
9 47:030.

10          Section 4. Public Notice. (1) Public notices shall contain the following information:

11          (a) Name, address, and telephone number of the division processing the permit action for  
12 which notice is being given;

13          (b) Name, address, and telephone number of the applicant and, if different, of the facility or  
14 activity regulated by the permit;

15          (c) A brief description of the petroleum contaminated soil treatment facility activities  
16 described in the permit application;

17          (d) A brief description of the proposed location of the petroleum contaminated soil  
18 treatment facility including a description of the primary access routes;

19          (e) The location of a repository for documents in the county in which the petroleum  
20 contaminated soil treatment facility is proposed or exists, including copies of the draft permit or  
21 permit, fact sheet and application;

22          (f) The time and place of a hearing when already scheduled and procedures by which the  
23 public may participate in the final permit decision;

1 (g) The statement: "The cabinet has issued a draft construction permit for a petroleum  
2 contaminated soil treatment facility. A person may comment on the draft permit within thirty (30)  
3 days of the publication of this notice as established in 401 KAR 47:207, Section 3 or request a  
4 hearing pursuant to 401 KAR 47:207, Section 8. If the cabinet issues a final construction permit,  
5 any person who may be aggrieved by the permit issuance shall have thirty (30) days to file a  
6 petition as established in KRS 224.10-420(2)."; and

7 (h) Additional information as established in KRS 224.40-305.

8 (2) Public notices may describe more than one (1) permit or permit action.

9 (3) Public notices shall be of a size to include not less than two (2) column widths for  
10 advertising and shall be in a display format.

11 (4) Public notices issued by the cabinet shall be distributed by the following methods:

12 (a) By mailing a copy of a notice to the following persons:

13 1. The applicant;

14 2. Other agencies that the cabinet knows have issued or are required to issue an  
15 environmental permit for the same facility or activity;

16 3. a. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources;

17 b. The Kentucky Heritage Council; and

18 c. Other government authorities with jurisdiction over the petroleum contaminated soil  
19 treatment facility, including other affected states;

20 4.a. Persons on a cabinet mailing list which has been compiled by notifying the public of  
21 the opportunity to be put on the mailing list through periodic publication; and

22 b. Individuals shall request in writing to be on the list;

23 5. a. Adjacent property owners to the proposed or existing facility.

1           b. If, prior to issuance of the final construction permit, an adjacent property owner provides  
2 written evidence to the cabinet that the adjacent property owner did not receive public notice as  
3 required in subsection (4)(a)5.a. of this section due to incorrect or incomplete information in the  
4 petroleum contaminated soil treatment facility permit application, the cabinet shall send a certified  
5 letter to the adjacent property owner and allow that property owner an additional thirty (30) days to  
6 provide public comment from the date of receipt of the certified letter.

7           (b) Publication of a notice in a daily or weekly major local newspaper of general  
8 circulation where the proposed or permitted site is located,

9           Section 5. Public Comment Period. The public comment period shall allow at least thirty  
10 (30) days for public comment during which an interested person may do the following:

11           (1) For the public notices established in Section 3(1) of this administrative regulation, an  
12 interested person may request a public hearing as established in Section 8 of this administrative  
13 regulation.

14           (2) For the public notices established in Section 3(3) of this administrative regulation:

15           (a) Submit written comments on the application or draft permit; or

16           (b) Request a public hearing as established in Section 8 of this administrative regulation.

17           (3) For issuance of the permit in Section 3(5) of this administrative regulation, file a  
18 petition for an adjudicative hearing within thirty (30) days of the date of issuance as established in  
19 KRS 224.10-420(2).

20           Section 6. Fact Sheet. (1)(a) A fact sheet shall be prepared by the cabinet for a draft permit  
21 for a new or major modification to a petroleum contaminated soil treatment facility as established  
22 in Section 2 of this administrative regulation.

23           (b) The cabinet shall send this fact sheet to the applicant and to a person when requested.

1 (2) The fact sheet shall include:

2 (a) A brief description of the petroleum contaminated soil treatment facility permit  
3 application which is the subject of the permit action;

4 (b) 1. The type and quantity of petroleum contaminated soil which is proposed to be and is  
5 being stored or treated; and

6 2. A summary of the facility design including the petroleum contaminated soil treatment  
7 area, equipment, structures, liner, and leachate collection system specification.

8 (c) A brief summary of the basis for the draft permit conditions including references to  
9 applicable statutory or regulatory provisions, and appropriate supporting references to the  
10 administrative record as established in Section 7 of this administrative regulation;

11 (d) Reasons why a requested variance as established in 401 KAR 30:020, Section 2 or  
12 other alternative to required standards is justified in the draft permit;

13 (e) The procedures for issuing a final decision on the draft permit including:

14 1. The beginning and ending dates of the comment period established in Section 8 of this  
15 administrative regulation, and the address where comments shall be received;

16 2. Procedures for requesting a hearing, and the nature of that hearing; and

17 3. Procedures including public participation in the final decision.

18 (f) Name and telephone number of a person to contact for additional information.

19 Section 7. Administrative Record for Permits. (1) The provisions of a draft permit prepared  
20 by the cabinet as established in subsection (1) of Section 3 shall be based on the administrative  
21 record.

22 (2) The administrative record shall consist of:

23 (a) The application and supporting data furnished by the applicant;

1 (b) The draft permit;

2 (c) The fact sheet as established in Section 6 of this administrative regulation;

3 (d) Documents cited in the fact sheet; and

4 (e) Documents contained in the supporting file for the draft permit.

5 (3)(a) Material readily available at the cabinet need not be physically included at the public  
6 repository if the fact sheet contains a specific reference to the material.

7 (b) Published material need not be physically included at the public repository if it is  
8 specifically referred to in the administrative record.

9 Section 8. Public Hearings. (1) The cabinet shall hold a public hearing when public interest  
10 exists concerning a notice of intent to apply for petroleum contaminated soil treatment facility  
11 permit or an application for petroleum contaminated soil treatment facility permit.

12 (2) Whenever a public hearing is held, the secretary of the cabinet shall designate a  
13 presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

14 (3)The presiding officer shall allow:

15 (a) Persons to submit oral or written statements;

16 (b) A five-minute limit on the time allowed for oral statement by each individual;

17 (c)1. The public comment period established in Section 5 of this administrative regulation  
18 to automatically be extended to the close of the public meeting; and

19 2. The cabinet shall not extend the thirty (30) day period to file a petition for an  
20 adjudicative hearing regarding permit issuance as established in KRS 224.10-420(2).

21 (4) A written transcript of the hearing shall be made available to a person upon payment of  
22 the cost of copying.

1           Section 9. Adjudicative Hearing. The cabinet shall hold an adjudicative hearing as  
2   established in KRS 224.10-420(2) whenever a petition in opposition to a permit and a request for  
3   an adjudicative hearing is received within thirty (30) days of the issuance of a final construction  
4   permit as established in subsection (5) of Section 3.

5           Section 10. Response to Comments. (1) At the time that the cabinet issues a final  
6   construction permit, the cabinet shall issue a response to comments which:

7           (a) Specifies which provisions of the draft permit have been changed in the final permit  
8   decision, and the reasons for the change; and

9           (b) Describes and responds to comments on the proposed permit raised during the public  
10   comment period or during a public hearing.

11          (2) The cabinet shall send the responses to comments to commenters.

12          (3) The cabinet shall document that copies have been sent to each commenter and make  
13   copies available to the public upon written request.

14          Section 11. Issuance and Effective Date of Permit. (1)(a) After the close of a public  
15   comment period as established in Section 5(2) of this administrative regulation and a hearing on a  
16   draft permit held in accordance with Section 8 of this administrative regulation, the cabinet shall  
17   issue a final construction permit decision as established in Section 3(5) of this administrative  
18   regulation.

19          (b) For the purposes of this section, a final construction permit decision means a final  
20   decision to issue, deny, modify, or terminate a permit.

21          (2) A final construction permit decision shall become effective on the date issued by the  
22   cabinet.



1           (3) The cabinet shall provide notice of the final construction permit to persons on the  
2 mailing list as established in Section 4(4)(a) of this administrative regulation.

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401 KAR 47:207 approved for filing.

4/14/11  
Date

  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds  
Division of Waste Management  
200 Fair Oaks, Second Floor  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Kelli.Reynolds@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of

(a) What this administrative regulation does:

This administrative regulation sets forth permit issuance and public information procedures for petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation:

This administrative regulation establishes requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities, which are a type of solid waste site or facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statutes by establishing requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities which will protect the environment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities will have to comply with the requirements for the permit issuance and public information procedures for petroleum contaminated soil treatment facilities permit. This includes the information needed in the public notice and how the cabinet will address public comment and issuance and effective date of the permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost to comply with this administrative regulation will be the cost to publish the add in the local newspaper.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

As a result of compliance with this administrative regulation, entities will be able to get a permit for a petroleum contaminated soil treatment facility.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will be no increase of fees and no additional funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation will not establish any new fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. The public information procedure requirements established in this administrative regulation apply to all petroleum contaminated soil treatment facilities.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 47:207

Contact Person: Kelli Reynolds

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Kentucky Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100 and KRS 224.40-305

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

No additional cost to the Division of Waste Management.

(d) How much will it cost to administer this program for subsequent years?

No additional cost to the Division of Waste Management.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: